IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2492 OF 2004

Mohammed Munir Sherali Ansari
alias Munir Langada ...Petitioner

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr.K.S.Dewal for Petitioner.

Mr.D.R.More, A.P.P. for Respondents.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 16, 2004.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.More, A.P.P. waives notice for Respondents.

3. As short question is involved, the matter is taken up for final disposal forthwith, by consent.

4. It is not necessary to elaborate on the events that culminated with the action taken against the Petitioner under Section 56(1), second part of clause (bbb) of the Bombay Police Act, 1951. Suffice it to mention that the show cause notice issued to the Petitioner indicated that the Petitioner was proposed to be externed from three Districts namely, Thane, Mumbai and Raigad for the alleged activities of the Petitioner. In response to the show cause notice, Petitioner filed his explanation and resisted the proposed action of externment on diverse grounds. The only ground that is relevant for our purpose is that with regard to the proposed area of externment, specific plea was taken by the Petitioner that it was excessive, having regard to the nature of activity of the Petitioner confined to Mumbra City only. Nonetheless, the first Authority proceeded to pass the order of externment not only externing the Petitioner from the proposed three Districts of Thane, Mumbai and Raigad, but also added one more District of Nasik. It is not in dispute that the Petitioner had no opportunity to explain about the

proposed action of externment even from District of Nasik. This grievance was specifically taken in the appeal preferred before the State Government, as provided by the Act. The Appellate Authority, however, has re-iterated the conclusion reached by the First Authority and preferred to reject the appeal. The sole ground on which this Petition ought to succeed, without going into any other aspect of the matter, is that the order of externment in question, on the face of it, cannot be sustained, being in violation of principles of natural justice. This is so because no notice was given to the Petitioner that the Authority proposes to extern the Petitioner even from the District of Nasik. To that extent, the grievance of the Petitioner will have to be readily accepted. Besides, the Petitioner has rightly relied on the decision of our High Court in the case of **Umar Mohamed vs. K.P.Gaikwad reported in 1988(2) Bom.C.R. 724**, to contend that there has to be good justification for requiring the externment order to be sustained beyond distance of 100 miles from the place of activity. For the aforesaid reasons, this Petition will succeed because the Authorities have

acted in excess of jurisdiction. No further investigation into the matter is necessary.

5. The Petition therefore succeeds by setting aside the impugned order, making it clear that it will be open to the Authorities to take such proceedings against the Petitioner, as may be permissible by law, if so advised. Such proceedings will, however, be decided on its own merits.

A.M.KHANWILKAR, J.